

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jacqueline Levy(F)	Team: Team # 2	CCRB Case #: 201208424	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/14/2012 10:00 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 12/14/2013	EO SOL 12/14/2013	
Date/Time CV Reported Fri, 06/29/2012 11:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/29/2012 11:44 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM James Famiano	07548	936568	NARCBBN
2. POM Emrah Ates	19618	942967	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Emrah Ates	Abuse: Det. Emrah Ates stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.POM James Famiano	Abuse: PO James Famiano stopped the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM James Famiano	Abuse: PO James Famiano frisked § 87(2)(b)	§ 87(2)(b)
D.POM James Famiano	Abuse: PO James Famiano searched § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On June 29, 2012, § 87(2)(b) filed this complaint with the CCRB via the online website (encl. 5A-D). On June 14, 2012, PO James Famiano and Det. Emrah Ates of Narcotics Borough Brooklyn North stopped § 87(2)(b)'s vehicle outside § 87(2)(b) in Brooklyn while transporting prisoners to the 75th Precinct stationhouse. The following allegations resulted:

- **Allegation A – Abuse of Authority: Det. Emrah Ates stopped the car in which § 87(2)(b) was an occupant.**
- **Allegation B – Abuse of Authority: PO James Famiano stopped the car in which § 87(2)(b) was an occupant.**
- **Allegation C – Abuse of Authority: PO James Famiano frisked § 87(2)(b)**
- **Allegation D – Abuse of Authority: PO James Famiano searched § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

- § 87(2)(g), § 87(4-b)

§ 87(2)(b)

Results of Investigation

Surveillance Footage from § 87(2)(b) (encl. 8A-E)

- Video Track 4 (black and white)
 - 10:00.51 p.m.: an NYPD sedan and two other vehicles drove by § 87(2)(b)
 - 10:01.11 p.m.: a sedan parked on the right side of the street.
 - 10:01.37 p.m.: § 87(2)(b) pulled up, got out of his car leaving the blinker on, and walked to his gate.
 - 10:02.10 p.m.: § 87(2)(b) walked back to his car and gestured behind him.
 - 10:02.25 p.m.: the officers' van pulled past § 87(2)(b)'s car and § 87(2)(b) started to back up. The officers stopped at the intersection, got out of their vehicle and walked to § 87(2)(b)'s car, leaving their van doors open.
 - 10:02.31 p.m.: § 87(2)(b)'s car door opened and § 87(2)(b) got out of the car.

- 10:02.37 p.m.: the officer who was driving and was wearing a striped shirt (PO Famiano) frisked § 87(2)(b) PO Famiano continued to interact with § 87(2)(b) while Det. Ates interacted with some bystanders.
- 10:04.34 p.m.: the officers got back in their vehicle and made a right onto Sutter Avenue.
- Video Track 5 (color):
 - 10:01.11 p.m.: a sedan parked on the right side of the street. There were no cars behind the sedan.
 - 10:02.06 p.m.: the officers' van pulls up as § 87(2)(b) walked back to his car, almost hitting him. PO Famiano gestured out the window to § 87(2)(b)
 - 10:02.30 p.m.: PO Famiano opened § 87(2)(b)'s door.
 - 10:02.35 p.m.: PO Famiano swings his arm forward toward § 87(2)(b) in a manner consistent with reaching into § 87(2)(b)'s pockets.

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b).

CCRB Testimony

On July 9, 2012, § 87(2)(b) provided a telephone statement (encl. 7A). On July 16, 2012, § 87(2)(b) was interviewed at the CCRB (encl. 7B-G). His statements were generally consistent.

On June 14, 2012, at 10:03 p.m., § 87(2)(b) was driving to his residence at § 87(2)(b) in Brooklyn. The location is around the corner from the 75th Precinct stationhouse. § 87(2)(b) stopped his vehicle with the left turn signal on and got out of the vehicle to open the gate to his driveway. He then walked back to his vehicle, at which point, two plainclothes officers in a white van, identified through investigation as PO James Famiano and Det. Emrah Ates of Narcotics Borough Brooklyn North, pulled up hard behind his vehicle, almost hitting him and his vehicle. § 87(2)(b) described PO Famiano, the driver, as a white man who stood 5'7" to 5'8" tall with a slim build. He described Det. Ates, the passenger, as a white man who stood 5'8" to 5'9" tall with a heavier build. § 87(2)(b) got into his vehicle and he and his neighbors, § 87(2)(b) and § 87(2)(b) who were also outside, told the officers that § 87(2)(b) was trying to pull into the driveway. The reverse lights at the rear of the vehicle were on. The officers refused to move. § 87(2)(b) pulled to the side to allow the van to pass. The van drove by and § 87(2)(b) yelled angrily to Det. Ates that PO Famiano and Det. Ates should have hit him.

PO Famiano and Det. Ates drove to the end of the block and stopped the van. § 87(2)(b) started to pull backward toward his driveway. The officers approached and told him to stop and get out of his vehicle. § 87(2)(b) stopped the car and complied. PO Famiano told § 87(2)(b) to put his hands on the car and told § 87(2)(b) that he was parked in the middle of the street and that he could have received five summonses. § 87(2)(b) told PO Famiano that he was never parked and that he was just trying to pull into his driveway. PO Famiano asked for § 87(2)(b)'s driver's license, but not his registration. § 87(2)(b) started to reach for the right front pocket of his jeans where he kept his wallet. PO Famiano stopped § 87(2)(b) and PO Famiano reached into § 87(2)(b)'s pocket and removed the wallet. § 87(2)(b) later added that PO Famiano first asked where § 87(2)(b) kept his wallet before removing it from his pocket. PO Famiano also reached into the left front pocket. PO Famiano did not frisk the pockets first. PO Famiano said multiple times that the officers could have given § 87(2)(b) five summonses and that they were giving § 87(2)(b) a chance by not doing so. Det. Ates shined his flashlight into § 87(2)(b)'s vehicle. PO Famiano

handed § 87(2)(b) back his license without running it. § 87(2)(b) did not see the officers write anything down. The officers got back into their van and pulled around the corner. § 87(2)(b) was not issued any summonses.

Witness: § 87(2)(b)

- § 87(2)(b) resides at § 87(2)(b).

CCRB Testimony

On February 7, 2013, § 87(2)(b) provided a telephone statement (encl. 9). His statement was generally consistent with § 87(2)(b)s.

§ 87(2)(b) saw his neighbor, § 87(2)(b) pull up outside the gate to § 87(2)(b) in Brooklyn, where § 87(2)(b) resides. § 87(2)(b) had just parked across the street and was with his wife. A white van pulled up and there was an exchange of words that § 87(2)(b) did not hear. Two officers got out of the van and told § 87(2)(b) to put his hands against the van. § 87(2)(b) complied. PO Famiano reached into § 87(2)(b)s back pockets and removed his wallet. § 87(2)(b) did not see § 87(2)(b) reach for his pockets. § 87(2)(b) could not say whether or not the officer reached into § 87(2)(b)s front pockets. § 87(2)(b) was standing about 12 feet away and did not approach because he did not want to interact with the officers.

Attempts to Contact Civilians

§ 87(2)(b) stated that he would consider coming to the CCRB to provide a sworn statement and call back because he was unsure as to how much he wanted to get involved in the complaint. § 87(2)(b) did not call back. He was reached by phone twice more but each time declined to speak to the undersigned investigator.

Between March 19, 2013, and April 26, 2013, § 87(2)(b) was called three times. Each time a message was left with a family member. On January 16, 2013, and May 6, 2013, letters were mailed to § 87(2)(b) neither of which has been returned by the United States Postal Service. § 87(2)(b) has not responded to these contact attempts.

NYPD Statements

Subject Officer: PO JAMES FAMIANO

- PO Famiano, § 87(2)(b) § 87(2)(b).
- On June 14, 2012, PO Famiano worked from 3:27 p.m. to midnight. He was assigned to the prisoner van with Det. Emrah Ates. He was in plainclothes and assigned to unmarked white van number 3302.

Memo Book (encl. 10A-C)

PO Famiano does not have any memo book entries regarding this incident. At 10 p.m., he arrived at the 75th Precinct stationhouse.

CCRB Testimony (encl. 11A-C)

On May 7, 2013, PO Famiano was interviewed at the CCRB.

On June 14, 2012, at approximately 10 p.m., PO Famiano and Det. Ates were transporting several prisoners to the 75th Precinct stationhouse. PO Famiano was the operator of the prisoner van. While driving to the stationhouse, they drove up behind § 87(2)(b) who was parked in the middle of the street outside of § 87(2)(b) in Brooklyn blocking traffic. Because Elton Street

is very narrow, PO Famiano was unable to pass § 87(2)(b). PO Famiano viewed the surveillance video and stated that the officers had been stopped behind § 87(2)(b) out of sight of the video prior to driving up directly behind him. PO Famiano did not remember for how long they had been stopped prior to being visible in the footage but confirmed that he had stated that he had been honking at § 87(2)(b) for several minutes. Shortly after the officers drove directly behind him, § 87(2)(b) got out of his car and cursed and screamed at the officers.

PO Famiano and Det. Ates got out of their vehicle and approached § 87(2)(b). PO Famiano was concerned about the safety of the prisoners. § 87(2)(b) did not get back into his vehicle after cursing at the officers. Before viewing the video footage, PO Famiano stated that the officers were still behind § 87(2)(b) and were unable to leave the scene at the time they got out of their vehicle; otherwise, they would have left. PO Famiano did not intend to give § 87(2)(b) any summonses. PO Famiano began to say that § 87(2)(b) eventually gave them space so the officers could leave, but cut himself off and stated that he maneuvered through a small space to pass § 87(2)(b).

While watching the surveillance footage, PO Famiano pointed out his prisoner van as having passed § 87(2)(b)'s vehicle before the officers got out and stated that they had been honking the horn for several minutes, so when they passed him, they got out to talk to him.

PO Famiano explained to § 87(2)(b) that they were police officers and were transporting prisoners and § 87(2)(b) being in the middle of the road presented a safety issue. (PO Famiano stated that it was hot and one of the prisoners was suffering from claustrophobia, but did not say whether this was explained to § 87(2)(b). § 87(2)(b) continued to act in an irate manner. § 87(2)(b) was verbally expressing anger but was not doing anything with his body. § 87(2)(b) did not provide an explanation as to why he was stopped in the middle of the street. PO Famiano and Det. Ates asked § 87(2)(b) for ID several times. PO Famiano spoke to § 87(2)(b) at a conversational volume, described as the same tone he was using during the interview, but he believed that § 87(2)(b) was able to hear him even though § 87(2)(b) was yelling. PO Famiano did not remember whether Det. Ates spoke directly to § 87(2)(b).

§ 87(2)(b) provided ID after a few minutes. The officers did not remove it from his person. The officers did not put § 87(2)(b) up against a car but PO Famiano did frisk him. PO Famiano initially stated that he frisked § 87(2)(b) for weapons after obtaining his ID, because § 87(2)(b) had at first refused to provide ID after several requests, causing PO Famiano to fear for his safety. PO Famiano later stated that he frisked § 87(2)(b) prior to obtaining his ID. PO Famiano did not reach into any of § 87(2)(b)'s pockets. Other than § 87(2)(b)'s irate behavior and initial refusal to provide ID, there was no other reason PO Famiano frisked § 87(2)(b) or feared for his safety. PO Famiano repeatedly stated that his concern was for the safety of the prisoners in the van, though the surveillance showed that he left the doors to the prisoner van open. PO Famiano did not remember any civilian approaching the prisoner van. PO Famiano did not recall seeing Det. Ates frisk or search § 87(2)(b). PO Famiano told § 87(2)(b) that he could have been given summonses, though he did not say for what the summonses would have been issued. The officers went back to their vehicle and went to the stationhouse. PO Famiano did not remember whether § 87(2)(b) had gotten back into his vehicle when the officers left.

When asked if the video refreshed his recollection, PO Famiano stated that there was not much visible in the video. He then added that it slightly refreshed his recollection but that there was nothing he wanted to add.

Subject Officer: DET EMRAH ATES

- *Det. Ates,* § 87(2)(b) [REDACTED].

- On June 14, 2012, Det. Ates worked from 3:27 p.m. to midnight. He was assigned to the prisoner van with PO James Famiano. He was in plainclothes and was assigned to a white Ford van with the last four digits of the license plate § 87(2)(b)

Memo Book (encl. 12A-C)

Det. Ates does not have any memo book entries regarding this incident. At 10 p.m., he was at the 75th Precinct stationhouse to process arrests.

CCRB Testimony (encl. 13A-C)

On May 8, 2013, Det. Ates was interviewed at the CCRB. His statement was consistent with PO Famiano's to the extent noted.

Det. Ates and PO Famiano were transporting prisoners to the 75th Precinct stationhouse. One of the prisoners was complaining that it was too hot in the van and that he was claustrophobic. § 87(2)(b) was in a sedan blocking Elton Street, which is one narrow lane. There is no way to pass a car stopped in the middle. There was a line of parked cars along Elton Street. § 87(2)(b) was in his car when the officers drove up behind it. Det. Ates was parked in the middle of the street for several minutes before he is in view of the surveillance camera, the footage from which he reviewed during the interview. Det. Ates remembered PO Famiano honking several times during a minute. They displayed their shields out of the window and asked § 87(2)(b) to move to the side. § 87(2)(b) was irate and cursed at the officers.

§ 87(2)(b) pulled his car to the side and the officers unsuccessfully attempted to pass. § 87(2)(b) pulled to the side again and the officers were able to drive by. When shown the video that shows § 87(2)(b) pulling to the side after returning to his car and that § 87(2)(b) was not completely blocking the road, Det. Ates stated that § 87(2)(b) must have pulled up the first time out of sight of the camera before which he was completely blocking the road. Det. Ates maintained this testimony despite viewing video that showed another car driving by approximately 40 seconds before § 87(2)(b) came into view. As the officers drove by, § 87(2)(b) yelled and cursed at them. Det. Ates told him that they were the police. Det. Ates' representative, Det. Robert Alongi, stated that he did not see any reason to stop § 87(2)(b) after § 87(2)(b) pulled up and to the side.

Det. Ates thought that § 87(2)(b) may not have understood the situation, so the officers got out of the vehicle and walked back to § 87(2)(b). After the officers pulled past, they stopped. They did not intend to issue § 87(2)(b) a summons and only went to speak with § 87(2)(b) so that he would know that they were officers. They told § 87(2)(b) that they were the police and had been trying to get through and told him not to park in the middle of the street as it is a traffic violation. § 87(2)(b) got out of his vehicle and said, "Fuck this." Det. Ates did not remember whether § 87(2)(b) was instructed to get out of the car. At one point Det. Ates was speaking to § 87(2)(b) and at another point, PO Famiano was speaking to § 87(2)(b) while Det. Ates did crowd control. Four to five people gathered. Det. Ates did not want any civilians going near the prisoner van. Det. Ates never got a clear explanation of anything from § 87(2)(b) because PO Famiano did most of the speaking to § 87(2)(b). He did not know if § 87(2)(b) provided an explanation as to why he was parked in the middle of the street, but § 87(2)(b) never provided an explanation to Det. Ates.

§ 87(2)(b) was never put up against the car. Det. Ates was not certain but he believed that PO Famiano frisked § 87(2)(b). Det. Ates believed that § 87(2)(b) should have been frisked because of his irate and threatening demeanor. § 87(2)(b) refused to listen to the officers and used offensive language toward them, including "fucking faggot." Upon being asked what was threatening about § 87(2)(b) Det. Ates stated that § 87(2)(b) refused to provide ID despite

multiple requests by PO Famiano. Det. Ates may have also asked § 87(2)(b) to provide his ID in support of PO Famiano. Det. Ates sought to calm the situation.

Det. Ates initially did not remember whether PO Famiano frisked § 87(2)(b) but viewing the surveillance video refreshed his recollection. Because PO Famiano conducted the frisk, he would have been the one to observe the immediate threat. § 87(2)(b) was threatening in the manner he got out of the car. He was cursing at the officers and would not stop even after being informed that they were police officers. Det. Ates had also displayed his shield in the window as they had driven past. The officers instructed § 87(2)(b) to relax, but he did not. Det. Ates did not see whether § 87(2)(b) made any gestures when he got out of the car because he was dealing with the bystanders.

When Det. Ates was asked if there was anything that made him believe that § 87(2)(b) had a weapon, Det. Ates' union representative interrupted and explained that the location is in the 75th Precinct, East New York, where there are a lot of weapons. Det. Ates did not see a bulge on § 87(2)(b). Det. Ates stated that he was unable to speak for PO Famiano as to whether PO Famiano saw a bulge, but PO Famiano never informed Det. Ates about having seen a bulge. Det. Ates was unable to say whether § 87(2)(b) was moving his arms, as he was focused on the bystanders, though he later stated that § 87(2)(b) appeared to be 'speaking with his hands.' § 87(2)(b) never made threatening remarks to Det. Ates or that Det. Ates heard, but Det. Ates did not know whether § 87(2)(b) made threatening remarks toward PO Famiano. Det. Ates did not know whether § 87(2)(b)'s ID was ultimately obtained. § 87(2)(b) was not searched. Because it was a "warn and admonish" situation, even if § 87(2)(b)'s ID had been obtained, there would be no reason to record it. Det. Ates' representative asked Det. Ates if § 87(2)(b) could have been arrested for disorderly conduct by the end of the incident and Det. Ates vehemently agreed that § 87(2)(b) could have been.

Det. Ates did not see all of PO Famiano's actions because he was trying to control bystanders who were attempting to get closer to PO Famiano and § 87(2)(b). One bystander approached Det. Ates and said, "What the fuck is going on?" Det. Ates informed the bystander that they were police officers and to relax. The bystander told Det. Ates to "get the fuck out of here." Det. Ates said, "I'm not going to 'get the fuck out of here.' I'm a police officer and I'm speaking to somebody." The officers then returned to their vehicle and drove to the 75th Precinct stationhouse.

NYPD Documents

75th Precinct Stop and Frisk Log (encl. 14A-E)

There were no Stop and Frisk Reports prepared for incidents in the vicinity of § 87(2)(b) nor were any prepared for any individuals with § 87(2)(b)'s date of birth. PO Famiano and Det. Ates did not prepare any Stop and Frisk Reports.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with regard to the incident as of July 16, 2013, more than nine months after the 90-day filing deadline (encl. 16).

§ 87(2)(b)

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§ 87(2)(b)

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- § 87(2)(b)

Subject Officers CCRB History

- PO Famiano has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 2A-B).
- Det. Ates has been a member of the service for six years and there is one substantiated CCRB allegations against him (encl. 2C).
 - In case number 201113929, a search of premises allegation was substantiated and charges were recommended. As of September 12, 2013, there is no NYPD disposition.

Conclusion

Identification of Subject Officers

- PO Famiano and Det. Ates admitting to stopping § 87(2)(b) PO Famiano admitted to frisking § 87(2)(b) Because the same officer who frisked § 87(2)(b) also searched § 87(2)(b) allegation A is pleaded against Det. Ates and allegations B, C, and D are pleaded against PO Famiano.

Investigation Findings and Recommendations

Allegation A – Abuse of Authority: Det. Emrah Ates stopped the car in which § 87(2)(b) was an occupant.

Allegation B – Abuse of Authority: PO James Famiano stopped the car in which § 87(2)(b) was an occupant.

Allegation C – Abuse of Authority: PO James Famiano frisked § 87(2)(b)

Allegation D – Abuse of Authority: PO James Famiano searched § 87(2)(b)

It is undisputed that Det. Ates and PO Famiano stopped § 87(2)(b)'s vehicle while § 87(2)(b) was attempting to pull into his driveway or that PO Famiano frisked § 87(2)(b) It is also undisputed that the officers had already driven past § 87(2)(b) when they got out of their vehicle to approach him. § 87(2)(b) alleged and § 87(2)(b) corroborated that PO Famiano also reached into at least one of § 87(2)(b)'s pockets. The stop and frisk are clearly visible on surveillance footage provided by § 87(2)(b) but there is not enough detail to clearly see whether the search was conducted. At 10:02.35 p.m., PO Famiano's arm swung forward in a manner consistent with reaching into § 87(2)(b)'s pants pockets, visible in video track 5.

PO Famiano denied searching § 87(2)(b) and Det. Ates stated that he was not in a position to see whether PO Famiano searched § 87(2)(b)

In order to stop a vehicle, an officer must have probable cause to believe the occupants have committed a traffic infraction or have reasonable suspicion that the occupants have engaged in or are engaging in criminal activity. People v. May, 593 N.Y.S.2d 760, 762-63 (1992) (encl. 1A-C). To frisk an individual, an officer must reasonably believe that the individual is armed. People v. DeBour, 40 N.Y.2d 210, 223 (1976) (encl. 1D-N). An officer may search a person if he has probable cause to believe the person has committed a crime or if a frisk reveals an object that could reasonable be mistaken for a weapon. People v. Hill, 569 N.Y.S.2d 227, 228 (1991 – 4th Dept.) (encl. 1U-W).

PO Famiano stated that he frisked § 87(2)(b) because he felt threatened by him because he was irate and refused to provide identification, though he stated that § 87(2)(b) was not moving his body in a threatening manner. § 87(2)(b), § 87(2)(g)

[illegible][illegible]

Investigator: _____
Signature

_____ Jacqueline Levy
Print

Date

CCRB – Confidential

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date